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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC. APPLICATION No 2811 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE D.G.KARIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? - Yes.

JJJ

2. To be referred to the Reporter or not? - No.

[illegible]

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3. Whether Their Lordships wish to see the fair copy of the judgement?-No.

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?-No.

5. Whether it is to be circulated to the Civil Judge?-No.

PATEL PRABHUBHAI SADABHAI

Versus

STATE OF GUJARAT

Appearance:

MR SK PATEL for Petitioners

Mr.N.D. Gohel, Addl. PUBLIC PROSECUTOR,  
for Respondent No. 1

MR YS LAKHANI for Respondent No. 2

CORAM : MR.JUSTICE D.G.KARIA

Date of decision: 16/10/97

ORAL JUDGEMENT

The petitioners are the original accused in respect of the offences alleged to have been committed by them under Sections 352, 504, 506(2) and 114 of the Indian Penal Code and the petitioners have approached this Court by filing the present petition under Section 482 of the Code of Criminal Procedure to quash the said complaint, being Enquiry Case No.82 of 1997, registered with the learned Judicial Magistrate, First Class, at Modasa. It is not in dispute that there is a dispute in regard to a well being of joint ownership of the family and a Regular Civil Suit No.271 of 1995 is pending between the parties in the Court of Civil Judge (Senior Division), at Himatnagar. It is the case of the petitioners that on account of the dispute pertaining to the well, the 2nd respondent has filed false and frivolous complaint for the aforesaid offences against the petitioners so as to harass and pressurize the petitioners in the matter of the aforesaid pending civil suit. It is also not in dispute that the petitioner No.5, Patel Dhulabhai Nathabhai, has also filed a criminal complaint for the offences under Section 188, 504, 506(2) read with Section 114 of the Indian Penal Code and for the offence under Section 135 of the Bombay Police Act against the 2nd respondent among others. The said complaint was filed on 28th October, 1996 and on the very day, the learned Judicial Magistrate, First Class, at Himatnagar ordered the concerned Police Authority to investigate into it under Section 156(3) of the Code of Criminal Procedure. The respondent No.2 among others was arrested on 22nd April, 1997 in this connection. The complaint lodged by the 2nd respondent, being Inquiry Case No.82 of 1997, has been lodged on 23rd April, 1997 in respect of the alleged incident said to have taken place on 21st April, 1997 at about 3.00 p.m. The complaint is thus lodged by the respondent No.2 after a lapse of two days. It is the prosecution case that at about 3.00 p.m. on 21st April, 1997, when the complainant was returning from the Market Yard to his house, the petitioners, armed with sticks, started quarrelling with the complainant, 2nd respondent, saying why he had not released his right from the disputed well and threatened him and criminally intimidated. When the said complaint in Inquiry Case No.82 of 1997 has been presented on 23rd April, 1997 before the learned Judicial Magistrate, First Class, Modasa, he passed the following order :-

"... It is ordered that the complaint be sent for investigation by Police under Section 156(3) of the Code of Criminal Procedure...."

The aforesaid complaint and the order passed below are sought to be quashed in the present petition.

I have heard Mr.S.K. Patel, learned Advocate appearing for the petitioners, Mr.N.D. Gohel, learned APP for the respondent-State and Mr.Pravin Gondaliya, for Mr.Y.S. Lakhani, for the 2nd respondent.

The records reveal that there is an outstanding dispute between the parties in respect of the well and the petitioners have earlier filed a complaint, being Inquiry Case No.127 of 1996, on 28th October, 1996, as aforesaid, and the 2nd respondent was arrested on 22nd April, 1997. Thus, looking to the facts of the complaint itself, a false case appears to be made out for the offence under Sections 352, 504, 506(2) read with Section 114 of the IPC for the reason that if the incident had taken place on 21st April, 1997, as alleged, there was no reason for the 2nd respondent to wait for lodging the complaint till 23rd April, 1997 and thereby, causing delay of two days in lodging the complaint. Mr. Gondaliya, for Mr.Lakhani, submitted that on 22nd April, 1997, the 2nd respondent was arrested and it caused delay in filing the complaint. It is alleged that the incident in question took place at 3.00 p.m. on 21st April, 1997 and if the incident had really taken place, as is alleged, the 2nd respondent should have lodged the complaint on 21st April, 1997 itself. However, from the facts and circumstances of the case, it is clearly disclosed that as he was arrested on 22nd April, 1997 in respect of the complaint filed by the petitioners on 28th October, 1996, the 2nd respondent has filed a false and frivolous complaint to harass and pressurize the petitioners. Mr.Gondaliya for the 2nd respondent pointed out that the averments as are made in the complaint disclose the offences prima facie. By narrating the incident and making out the ingredients of a particular offence will not be enough to take cognizance of the offence if the surrounding circumstances disclose that the complaint is false and made with an ulterior motive. There is, therefore, non-application of mind on the part of the learned Magistrate in forwarding the complaint for investigation under Section 156(3) of the Code of Criminal Procedure.

In case of Suresh Kumar Gupta v. State of Gujarat & Anr., reported in 1997(2) G.L.H. 356, this Court (S.M. Soni, J.) has held that every Magistrate shall record a short order disclosing the reason why he needs investigation under Section 156(3) of the Code

through Police Agency and why he is unable to try himself. It is further held that such an order to direct inquiry under Section 156(3) should be treated as bad, in absence of any such reasons. As aforesaid, the learned Magistrate has not assigned any reason whatsoever for forwarding the complaint for investigation under Section 156(3) of the Code. Applying the ratio laid down in the case of Suresh Kumar Gupta (supra), the impugned order and the complaint require to be quashed.

In the above premises, the petition succeeds and the criminal complaint, being Inquiry Case No.82 of 1997, against the petitioners and the orders passed there-below on 23rd April, 1997 are ordered to be quashed. Rule is accordingly made absolute.

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(apj)